

Ton-Tex Corporation and Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.
Case 7-CA-16140

26 August 1983

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election¹ held on 9 January 1981 and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations.²

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was eight for, and five against, the Petitioner; there was one challenged ballot, an insufficient number to affect the results.

² At an informal organizational meeting held approximately 5 weeks before the election an employee asked how other employees could be kept from crossing the picket line in the event of a strike. The credited testimony shows that several employees (none of whom was an agent of the Petitioner) said that there were ways of taking care of that. The credited testimony also shows that the Petitioner's representative who was present at the meeting did not make the remark.

The Hearing Officer found that the remark was vague and, as it was made by employees in the question-and-answer portion of an informal meeting, neither coercive nor threatening. In addition, the Hearing Officer found that, even if the remark was a threat that the Petitioner ratified, it was not objectionable under the standard in *Hickory Springs Mfg.*

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment:

All full-time and regular part-time production and maintenance employees, including truck-drivers and shipping and receiving employees, employed by the Employer at its facility located at 5436 36th Street, Grand Rapids, Michigan; but excluding all salesmen, office clerical employees, professional employees, technical employees, confidential employees, guards and supervisors as defined in the Act.

Co., 239 NLRB 641 (1978), *affd.* in the summary judgment proceeding 247 NLRB 1208 (1980), enforcement denied 645 F.2d 506 (5th Cir. 1981).

Members Jenkins and Zimmerman agree with the Hearing Officer's conclusion that the remark was vague and, made in an informal setting by employees to employees, was not coercive. As to the Hearing Officer's alternative finding, they note that *Hickory Springs* was overruled in *Home & Industrial Disposal Service*, 266 NLRB 100 (1983) (Member Jenkins dissenting). Since they find the remark to be vague and noncoercive on its face, they find it unnecessary to determine whether the Union ratified the remark and, if so, whether the remark falls within the scope of *Home & Industrial Disposal Service*, *supra*.